

Before the  
Administrative Hearing Commission  
State of Missouri

DIRECTOR OF DEPARTMENT  
OF PUBLIC SAFETY,

Petitioner,

vs.

SAMMY J. NASR,

Respondent.

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No. 13-1129 PO

**DECISION**

Sammy J. Nasr’s peace officer license is subject to discipline because he committed the criminal offense of driving while intoxicated and because his commission of the offense violated a term of his probation.

**Procedure**

On June 21, 2013, the Director of the Department of Public Safety (“the Director” and “the Department,” respectively) filed a complaint seeking to discipline Nasr. On August 2, 2013, Nasr was personally served with a copy of the complaint and our notice of complaint/notice of hearing. Nasr did not file an answer.

On October 16, 2013, the Director filed a motion for summary decision. We allowed Nasr until October 31, 2013 to respond to the motion, but he did not respond. Pursuant to 1 CSR 15-3.446(6)(A),<sup>1</sup> we may decide a motion for summary decision if a party establishes facts that

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<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

entitle that party to a favorable decision and no party genuinely disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.<sup>2</sup> The motion relies on the affidavit of Kimberly Haddix regarding the Department's records, a copy of an order of the Department placing Nasr's license on probation, and a copy of the unanswered request for admissions the Director served on Nasr.

By failing to answer or otherwise respond to the complaint, Nasr has admitted the allegations contained therein.<sup>3</sup> By failing to respond to the motion for summary decision, he has also failed to raise a genuine issue as to the facts the Director established in his motion.<sup>4</sup> And, under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.<sup>5</sup> Such a deemed admission can establish any fact or any application of law to fact.<sup>6</sup> That rule applies to all parties, including those acting *pro se*.<sup>7</sup> Section 536.073<sup>8</sup> and 1 CSR 15-3.420(1) apply that rule to this case. Therefore, the following findings of fact are undisputed.

### **Findings of Fact**

1. Nasr is licensed as a peace officer. This license is, and was at all relevant times, current and active.
2. On June 25, 2012, this Commission issued a consent order concluding that Nasr's license is subject to discipline.<sup>9</sup> On August 1, 2012, the Department issued an order placing Nasr's license on probation for a term of five years. One condition of his probation was that he "not violate the criminal laws of the State of Missouri."<sup>10</sup>

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<sup>2</sup>1 CSR 15-3.446(6)(B).

<sup>3</sup> 1 CSR 15-3.380(7)(C)1.

<sup>4</sup> 1 CSR 15-3.446(6)(B).

<sup>5</sup> *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

<sup>6</sup> *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

<sup>7</sup> *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983)

<sup>8</sup>RSMo 2000. Statutory references, unless otherwise noted, are to RSMo Supp. 2012.

<sup>9</sup>*Director of Dep't of Pub. Safety v. Nasr*, No. 12-0204 PO (June 25, 2012).

<sup>10</sup>Exhibit B-1 to motion.

3. On August 13, 2012, Nasr operated a motor vehicle while in an intoxicated condition in Kansas City, Missouri.

### **Conclusions of Law**

We have jurisdiction to hear this case.<sup>11</sup> The Director has the burden of proving that Nasr has committed an act for which the law allows discipline.<sup>12</sup> The Director argues that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

\* \* \*

(5) Has violated a condition of any order of probation lawfully issued by the director[.]

The Director argues that Nasr committed the crime of driving while intoxicated in violation of § 577.010:

1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

The Director has proven by a preponderance of the evidence that Nasr committed the criminal offense of driving while intoxicated. Nasr's commission of a criminal offense is cause for discipline under § 590.080.1(2).

Nasr's commission of the offense also violated one of the terms of his probation. The probation order of the Department of Public Safety states that Nasr "will not violate the criminal law of the State of Missouri." Nasr violated § 577.010, a criminal law, when he operated a

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<sup>11</sup>Section 590.080.2.

<sup>12</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

motor vehicle while in an intoxicated condition in Kansas City, Missouri. There is cause for discipline under § 590.080.1(5).

**Summary**

Nasr's peace officer license is subject to discipline under § 590.080.1(2) and (5).

SO ORDERED on November 12, 2013.

*\s\ Sreenivasa Rao Dandamudi*

SREENIVASA RAO DANDAMUDI  
Commissioner